

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS CLUCK	:	CIVIL ACTION
	:	
v.	:	
	:	
ROBERT SHANNON, et al.	:	NO. 06-cv-00503-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 8, 2006

The United States Magistrate Judge to whom this case was referred for a report and recommendation has recommended that the petition be denied. The petitioner has filed objections to the magistrate's report, and has also filed a "Motion to Take Judicial Notice." The latter motion refers to the fact that petitioner sought leave of the Pennsylvania Supreme Court to file an application for habeas relief in that Court (apparently, under legal principles relating to the writ of *coram nobis*). On May 19, 2006, the Pennsylvania Supreme Court entered an order, as follows: "The application for leave to file original process is granted and the petition for writ of habeas corpus is denied." While I am prepared to take judicial notice of these events, their significance remains a mystery. Apparently, petitioner contends that it was not until the Pennsylvania Supreme Court entered the order quoted above, that petitioner had fully exhausted his state court remedies, hence the time within which he could seek federal habeas relief did not begin to run until that date.

As noted in the magistrate judge's report, the time within which petitioner could seek habeas corpus relief in federal court expired several years ago. The present petition is obviously untimely, and it was appropriate for the magistrate judge to raise that issue *sua sponte*. I therefore readily agree with the magistrate's recommendation that the petition should be dismissed on grounds of its untimeliness. And, regardless of the timeliness issue, the petition is totally lacking in merit: the Shepard decision is not retroactive. Besides, it clearly has no application to petitioner's case - the enhancement of petitioner's sentence because of previous convictions was justified by the convictions themselves, regardless of the factual details of the crimes involved. The magistrate's recommendation will be approved.

An Order follows.

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ORDER

AND NOW, this 8th day of June 2006, IT IS ORDERED:

1. Petitioner's "Motion to Take Judicial Notice" is GRANTED.
2. Petitioner's objections to the magistrate's report are OVERRULED.
3. The Report and Recommendation of United States Magistrate Judge Jacob P. Hart is APPROVED and ADOPTED.
4. The petition for a writ of habeas corpus is DENIED. There is no basis for issuing a certificate of appealability.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.